

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 32**

(Milpitas, Concord, South San  
Francisco, CA)

SHRED-IT U.S.A., INC.  
Employer

and

Case No. 32-RC-4915

FREIGHT, CONSTRUCTION, GENERAL  
DRIVERS, WAREHOUSEMEN AND  
HELPERS, LOCAL 287, INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS, AFL-CIO;

and

RETAIL DELIVERY DRIVERS, DRIVER  
SALESMEN and HELPERS, LOCAL 278,  
INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, AFL-CIO;

and

GENERAL TRUCK DRIVERS,  
WAREHOUSEMEN, HELPERS, AND  
AUTOMOTIVE EMPLOYEES, LOCAL 315,  
INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, AFL-CIO

Joint Petitioners<sup>1</sup>

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein the Board.

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<sup>1</sup> The Employer's and Joint Petitioners' names appear as stipulated at the hearing.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, including the parties' briefs and arguments made at the hearing, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated, and I find that the Employer, a Delaware Corporation, with offices and places of business in several states, including facilities in Milpitas, Concord, and South San Francisco, California, is engaged in the business of collecting, shredding and recycling documents and materials from various business establishments. During the previous twelve month period, in the operation of its facilities within the State of California, the Employer purchased and received goods, supplies, materials and/or services valued in excess of \$50,000 directly from suppliers located outside the State of California. Accordingly, I find that the Employer is engaged in commerce within the meaning of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated, and I find that the Unions involved (the Joint Petitioners) are labor organizations within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. Joint Petitioners seek to represent a unit of all drivers, excluding all other employees including guards, office clerical employees and supervisors as defined by the Act. The Joint Petitioners are petitioning for one overall bargaining unit, which consists of all drivers who work at three separate sites located in Milpitas, Concord and South San

Francisco, California. The Employer contends that the petitioned for employees, whose job titles are customer service representatives (CSRs), are guards within the meaning of the Act. The Employer further argues that the Joint Petitioners represent and accept into membership employees who are not guards, and therefore that pursuant to Section 9(b)(3) of the Act the CSRs must be excluded from the petitioned-for unit. The Employer agrees that, but for the guard status issue, the three facility bargaining unit would be an appropriate unit. For the reasons set forth below, I find no merit to the Employer's contention that the CSRs are guards.

### THE FACTS

The Employer is engaged in the collection, shredding and recycling of documents and other items for various business establishments. The three Employer locations at issue in this case are located in Milpitas, South San Francisco and Concord, California. The general manager at the Milpitas facility is Matt Johnson. The Milpitas facility has a customer service representative supervisor named Manuel Puentes. It appears that there are 13 CSRs employed by the Employer at that facility. The general manager at the South San Francisco facility is named Dakeba Jones. The South San Francisco facility has four CSRs and does not have a customer service representative supervisor. At the Concord facility, Margaret Burris is the general manager. The Employer employs four CSRs at the Concord facility and does not employ a customer service representative supervisor at that facility.

From these three facilities, the Employer dispatches mobile shredding vehicles to its customers' facilities. The record discloses that the Employer's CSRs' primary tasks involve driving to customers' facilities, collecting materials from Employer provided locked consoles inside the customers' facilities, transporting those materials to the truck parked

outside the customers' facilities, placing the materials into the shredder located inside the shredding trucks and transporting the shredded documents and materials back to the Employer's facility for eventual recycling.<sup>2</sup>

The mobile shredding trucks driven by the CSRs are approximately 24-26 foot long with air brakes. A Class B license is required to operate the trucks and CSRs are required to maintain current certification with Department of Transportation (DOT) and must comply with DOT requirements, such as passing physical exams. The trucks do not have alarm systems, but CSRs are instructed not to leave the truck unsecured and are required to keep the doors locked anytime they are away from the vehicle. CSRs are also required to close a security gate on the truck during shredding, which prevents unauthorized access to the shredding compartment and prevents materials from coming out of the shredding compartment during the shredding process.

The Employer generally assigns one CSR to a truck, but may assign two for larger jobs. CSRs receive route schedules at the beginning of each day. The number of customer stops assigned to a CSR varies and may include as many as 15 stops per day. CSRs spend approximately 40 to 60 minutes per day at the Employer facility at which they are employed taking care of paperwork and performing pre-trip and post-trip vehicle inspections.

The Employer's customers have different procedures for allowing the CSRs access when the CSRs arrive to retrieve the materials to be shredded. Some customers require only that the CSR sign-in, others provide the CSR with an additional badge, keys, security cards or access codes so that the CSR may gain access to areas where consoles are

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<sup>2</sup> On extremely rare occasions, less than 1% of its business, the Employer will provide off-site document and material destruction.

located. In some instances a customer may perform its own background check on CSRs. Upon arrival at a customer location, the CSR checks in with the customer contact and begins removing materials from the Employer provided consoles. The consoles are secured with deadbolt locks, and the CSR and the customer contact are the only individuals with keys to the console. CSRs are instructed to deny anyone other than the customer contact on-site access to the console or to any materials removed from the console. Once the console is unlocked, the CSR removes a nylon bag that holds the materials to be shredded from the console, replaces the bag with any empty nylon bag and locks the console. The bag with the materials to be shredded is closed, though not locked, and the CSR proceeds either to another console to collect additional materials or to the truck to begin shredding. Once at the truck, the CSR locks the security gate and places the materials from the console into the shredding mechanism. The machine is able to shred a console worth of materials, up to about 100 to 120 pounds, almost instantly. The entire process of picking up the materials, taking them to the truck and shredding them, takes approximately six minutes per console. Once materials are shredded, the CSR completes a customer invoice and a certificate of destruction, which are then provided to the customer. CSRs have cell phones or two-way radios and are required to call into the office at the conclusion of each stop to report how long the job took and to report that they are going to the next customer's facility or are returning to the Employer's facility.

CSRs are required to wear a uniform, which includes pants, a shirt, and safety shoes. They are required to wear a shoulder patch that states, "On-Site Shredding" and "Document Security" and an I.D. badge, which has the company logo, the employee's name and the employee's photo. CSRs must pass a pre-employment background check,

which includes a check of their criminal history, driving record and credit history. They must be bondable to a minimum of one million dollars prior to employment and are bonded once employed. Newly hired CSRs are trained regarding the safety and security functions of the job. Initially, they are provided with employment manuals and are quizzed on materials presented. For the first two weeks of employment, new CSRs are sent out with a customer service supervisor or another CSR for training purposes. It appears that the bulk of the security training involves the procedures necessary to ensure that customer materials are not lost and are not visible during transport to the shredding truck, and to ensure that the shredding truck is locked and that all of the customer's documents and materials are properly shredded. CSRs are also required to sign confidentiality agreements stating that they are not to look at any documents and will not disclose any confidential information regarding the customers. The Employer performs spot audits and ride-alongs to make sure its policies and procedures are being followed.

#### POSITION OF THE PARTIES

As noted, Joint Petitioners seek to represent a unit of all drivers, excluding all other employees including guards, office clerical employees and supervisors as defined by the Act. The Joint Petitioners are petitioning for one overall bargaining unit, which consists of three separate sites located in Milpitas, Concord and South San Francisco, California. While agreeing to the appropriateness of the multi-facility nature of the petitioned for unit, the Employer contends that the drivers/CSRs are guards within the meaning of the Act, that the Joint Petitioners represent and allow into membership employees who are not guards, and that under Section 9(b)(3) of the Act the CSRs must be excluded from the petitioned-for unit. For the reasons set forth below, I find no merit to this contention.

Section 9(b)(3) of the Act, provides that labor organizations, which admit into membership employees who are not guards, may not be certified as the collective-bargaining representative of a unit of guards. Therefore, as argued by the parties, the dispositive issue in this case is whether the CSRs are guards. Section 9(b)(3) of the Act also describes a guard as "an individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises." Under Board law, an employee is a guard if the employee's "basic function" is the protection of property of the Employer's customers, and the employee must be "directly and substantially" engaged in the protection of customer property. Pony Express Courier Corp., 310 NLRB 102, 103 (1993); Courier Dispatch Group, 311 NLRB 728, 733 (1993). Merely handling valuable materials for a customer does not make a person a guard. See Purolator Courier Corp., 300 NLRB 812 (1990) and Pony Express Courier Corp., 310 NLRB 102, 103 (1993). Rather, the Board considers the characteristics of the employees' duties and of the employer's operations. Arcus Data Security Systems, 324 NLRB 496 (1997).

Here, the CSRs are not trained or instructed to resist in any way if someone attempted to steal or read the customer's protected documents or materials, or if someone otherwise posed a danger to the CSRs or to the customer's facility.<sup>3</sup> Rather, they are instructed to report attempts at theft and other suspicious activities. The CSRs wear uniforms and patches, but do not carry weapons or wear a bullet proof vest. They are not trained in the use of weapons or hand-to-hand combat, and do not drive an armored vehicle. CSRs are not registered as guards with any State of California agency, and the

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<sup>3</sup> In fact, theft or attempted theft of customer documents and materials is a "rare occurrence," and those occurrences enumerated at the hearing consisted of two attempted thefts, one in the U.S. and another in Canada, both undertaken by the Employer's own CSRs.

duties of the CSRs are similar to that of a courier; that is, they pick up and transport the customer's documents and materials to the van.<sup>4</sup> In Arcus, these factors were all present and were relied on in finding that the employees were not guards. *ibid.* Moreover, many of these same factors were present in the Purolator case where again the employees were found not to be guards. Purolator Courier Corp., *supra*.

The Employer also argues that there are other factors that establish that the primary function of the CSRs is protecting the security of the client's documents and materials. These factors include the Employer's background check of applicants; its training of new CSRs regarding safety and security matters; its bonding of the CSRs; its security procedures, such as the use of locked containers and vans; its holding itself out to the public as a document security organization; and the CSRs' access to the customer's premises and their accountability to the Employer for protecting the property. Although the employer in Arcus did not hold itself out to the public as a security provider, all of the other factors relied on by the Employer in this case were present in Arcus, and many of these factors were present in the Purolator case; yet in each instance the employees were found not to be guards. Arcus Data Security Systems, *supra* and Purolator Courier Corp., *supra*. I also note that in another courier case, the employees were found not to be guards despite the fact that the employer there advertised that it provided protective and time sensitive deliveries of valuable commodities. Pony Express Courier Service, *supra*. I have therefore concluded that the nature of the Employer's

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<sup>4</sup> The evidence establishes that CSRs employed by the Employer have shredded business, medical and law enforcement records, computer parts, stamps, lottery tickets, cell phones and telephone credit cards, all of which may be considered "valuable." Although it appears that the Employer evidence on this issue is based on its operations as a whole, and does not clearly establish what materials are actually shredded by the CSRs at the three facilities at issue in this case, at least a significant portion of the items shredded by the CSRs in the petitioned for unit are important to the customers, and it is likely that a significant portion of these items are valuable, prior to the point that they are shredded. Thus the period of time during which the CSRs have possession of the customers' valuable materials is much shorter than that of a typical courier.



advertising is not sufficient in and of itself to overcome the other factors described above and does not warrant finding the CSR's to be guards.

The Employer cites Allen Services Company, Inc., 314 NLRB 1060 (1994) to support its position that the CSRs are guards even though they do not carry weapons or interfere with or use physical force to prevent thefts. In Allen, the Board found that security personnel at a railway yard were guards despite the fact that they were unarmed and were required only to observe and report trespass or vandalism. However, unlike the instant case, the basic function of the security personnel in Allen was to sit in an office and observe the railway yard and equipment to insure that no unauthorized people entered the customer's premises or climbed on or vandalized railway equipment. Here, the CSRs primary function is to collect, destroy, and then transport the shredded documents and materials. For the reasons set forth above, I conclude that the CSRs are not guards within the meaning of Section 9(b)(3) of the Act and that the Joint Petitioners are eligible to serve as the joint representatives of the CSRs for purposes of collective bargaining, if so elected.

Accordingly, I shall direct an election among the following employees:

All full time and regular part time drivers/customer service representatives employed by the Employer at its Milpitas, South San Francisco, and Concord, California facilities, excluding all other employees, including guards, office clerical employees and supervisors as defined in the Act.

There are approximately 21 employees in the above described unit.

## **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.<sup>5</sup>

Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether or not they desire to be represented by

FREIGHT, CONSTRUCTION, GENERAL DRIVERS, WAREHOUSEMEN AND HELPERS, LOCAL 287, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO; RETAIL DELIVERY DRIVERS, DRIVER SALESMEN AND HELPERS, LOCAL 278, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO; and GENERAL TRUCK DRIVERS, WAREHOUSEMEN, HELPERS, AND AUTOMOTIVE EMPLOYEES, LOCAL 315, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO.

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<sup>5</sup> Please read the attached notice requiring that election notices be posted at least three (3) days prior to

## **LIST OF VOTERS**

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359, 361 fn. 17 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the NLRB Region 32 Regional Office, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-5211, on or before September 24, 2001. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

## **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board,

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the election.

addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, DC 20570.

This request must be received by the Board in Washington, D.C., by October 1, 2001.

DATED AT Oakland, California this 17<sup>th</sup> day of September, 2001.

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